

No. 1-11-1192

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JP MORGAN CHASE BANK,) Appeal from
) the Circuit Court
Plaintiff-Appellee,) of Cook County
)
v.) No. 09 CH 40128
)
EMANUELA DRAGAN,) Honorable Darryl B. Simko,
) Judge Presiding.
Defendant-Appellant.)

JUSTICE PALMER delivered the judgment of the court.
Presiding Justice R.E. Gordon and Justice Lampkin concurred in the judgment.

ORDER

- ¶ 1 **Held:** The trial court dismissal of defendant's successive motion to quash was affirmed where service of process was properly made on defendant by a special process server under General Administrative Order 2007-03.
- ¶ 2 Plaintiff JP Morgan Chase Bank filed a complaint for foreclosure of a mortgage that secured a loan made to defendant Emanuela Dragan. Service was made on defendant by way of a special process server pursuant to section 2-202 of the Code of Civil Procedure (Code) (735

ILCS 5/2-202 (West 2010)) and "General Administrative Order 2007-03" (June 22, 2007) (GAO 2007-03). The trial court subsequently denied defendant's second motion to quash under section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2010)). On appeal, defendant contends that service was improper because the trial court lacked the authority to appoint a special process server. We dismiss the appeal for want of jurisdiction.

¶ 3 On October 20, 2009, plaintiff filed a complaint to foreclose on a mortgage securing a loan made to defendant in 2006. Plaintiff also filed a motion for appointment of a special process server pursuant to GAO 2007-03, issued in 2007 by Judge Dorothy Kirie Kinnaird, then the presiding judge of the chancery division of the Circuit Court of Cook County. GAO 2007-03 authorizes law firms handling mortgage foreclosure cases in the chancery division to move for a standing order for the appointment of designated special process servers.

¶ 4 On November 18, 2009, defendant was served with summons and the complaint by special process server Terry Ryan of United Processing, Inc. Defendant failed to appear in the case, and on March 22, 2010, default judgment was entered against her. The subject property was subsequently sold, and on September 27, 2010, the court entered an order approving report of sale and distribution. There is no dispute that at each stage of the proceedings defendant was served with notice but failed to appear.

¶ 5 On January 19, 2011, defendant filed a motion to quash service. On February 1, 2011, the motion was denied for a failure to comply with section 2-1401 of the Code and with Illinois Supreme Court Rules 105 (eff. Jan 1, 1989) and 106 (eff. Aug. 1, 1985). Defendant did not appeal.

¶ 6 On March 8, 2011, defendant filed a second motion to quash service "and to vacate all orders pursuant to 735 ILCS 5/2-1401." The second motion was essentially identical to the first motion to quash, differing only by the addition of a paragraph stating that section 2-1401 of the Code does not require the attachment of an affidavit where a defendant relies on matters in the record of the case. On March 22, 2011, defendant's motion was denied.

¶ 7 On appeal, defendant contends that: (1) Judge Kinnaird lacked the judicial power to issue and enforce GAO 2007-03 because her authority did not descend from common law or statute and GAO 2007-03 conflicts with sections 2-202 and 2-201 of the Code (735 ILCS 5/2-202 (West 2010); 735 ILCS 5/2-201 (West 2010)); (2) strict compliance with statutes governing service of process is required; (3) absent statutory authority, GAO 2007-03 involves hypothetical controversy; (4) rules of the court should be readily accessible; (5) compliance with the law of the land trumps judicial economy; and (6) service by Terry Ryan was improper.

¶ 8 We must first address plaintiff's contention that we lack jurisdiction to consider this appeal. See *In re Marriage of Molly*, 407 Ill. App. 3d 987, 991-92 (2011) (citing *Almgren v. Rush-Presbyterian-St. Luke's Medical Center*, 162 Ill. 2d 205, 210 (1994) (the supreme court requires courts of review to first determine whether jurisdiction exists to address the merits of an appeal). The jurisdiction of a court of review is limited only to the judgments specified in the notice of appeal. *General Motors Corp. v. Pappas*, 242 Ill. 2d 163, 176 (2011).

¶ 9 Plaintiff contends that this court lacks jurisdiction to consider defendant's appeal under *Village of Glenview v. Buschelman*, 296 Ill. App. 3d 35 (1998). In *Buschelman*, we found that we lacked jurisdiction over an appeal from a trial court order denying an appellant's successive

section 2-1401 motion where the trial court did not grant the appellant leave to amend his first section 2-1401 motion and the appellant failed to timely appeal the denial of the first section 2-1401 motion. *Buschelman*, 296 Ill. App. 3d at 41-42¹. We recognize that in *People v. Walker*, 395 Ill. App. 3d 860, 867-70 (2009), the Second District deemed *Buschelman* "wrongly decided."² However, we need not resolve this difference in opinion, as neither *Buschelman* nor *Walker* involved an appeal stemming from an allegedly void order entered by the trial court. Because defendant's appeal involves an allegedly void order, we will address her appeal on the merits. See *Tomm's Redemption, Inc. v. Park*, 333 Ill. App. 3d 1003, 1008 (2002) (a petition to vacate a void judgment "may be attacked at any time or in any court either directly or collaterally," and the allegation that a judgment or order is void substitutes for and negates the need to allege a meritorious defense or due diligence).

¶ 10 We now address the crux of this appeal: whether Judge Kinnaird lacked the judicial power to issue and enforce GAO 2007-03. We review *de novo* the trial court's denial of a section 2-1401 motion alleging a void judgment. *Protein Partners, LLP v. Lincoln Provision, Inc.*, 407 Ill. App. 3d 709, 716 (2010) (citing *People v. Vincent*, 226 Ill. 2d 1, 18 (2007)).

¹Citing *Deckard v. Joiner*, 44 Ill. 2d 412, 418-19 (1970), we reasoned that repeated postjudgment motions are generally prohibited because "they unnecessarily frustrate the policy of bringing finality to court proceedings[.]" especially "where those petitions call on courts to entertain matters that were previously adjudicated or that could have been raised earlier in the proceedings." *Buschelman*, 296 Ill. App. 3d at 39-40.

²The *Walker* court took the position that *Buschelman* incorrectly relied on *Deckard* and that "nothing in Illinois law *** suggests that a party is limited jurisdictionally to one section 2-1401 petition." *Walker*, 395 Ill. App. 3d at 868.

¶ 11 In *U.S. Bank, N.A. v. Dzis*, 2011 IL App (1st) 102812 (2011), we recently considered the validity of the GAO at issue in this case. In that case, U.S. Bank (the plaintiff) sued the defendant to foreclose its mortgage. The defendant's law firm filed a motion for appointment of a special process server pursuant to GAO 2007-03. The law firm attached a standing order to the motion entered two weeks before the law suit where the trial court appointed four private detective agencies to act as special process servers for any mortgage foreclosure cases filed by the defendant's law firm within a three month period. One of the detective agencies appointed by the court tried to serve the defendant but was ultimately unsuccessful. Following notice of the foreclosure by publication, the trial court entered a default order against the defendant because he failed to appear in response to the service by publication and personal service. *Dzis*, 2011 IL App (1st) 102812 ¶¶ 3-4. The defendant then appeared and filed a motion to quash service of process, contending that the standing order was invalid. *Dzis*, 2011 IL App (1st) 102812 ¶ 5. The trial court denied the motion to quash. *Dzis*, 2011 IL App (1st) 102812 ¶ 6.

¶ 12 On appeal, the defendant challenged the validity of GAO 2007-03, arguing that the court lacked authority to enter the GAO, and that the GAO deprives mortgagors of procedural due process, substantive due process and equal protection of the laws. *Dzis*, 2011 IL App (1st) 102812 ¶ 14. We held that Judge Kinnaird was permitted to enter GAO 2007-03 in the exercise of her general administrative authority, reasoning that:

"Supreme Court Rule 21(c) authorizes the chief judge of a circuit court to
'enter general orders in the exercise of his or her general administrative authority.'

Ill. S. Ct. R. 21(c) (eff. Dec. 1, 2008). Illinois courts have interpreted the rule to

permit the chief judge of a circuit court to delegate his authority to enter general orders to the presiding judges of the circuit court's divisions. *Blair v. Mackoff*, 284 Ill. App. 3d 836 (1996); *People v. Hattery*, 183 Ill. App. 3d 785 (1989). In *Blair*, *** the appellate court held that the presiding judge of the domestic relations division of the circuit court of Cook County had authority to promulgate a general administrative order, and in *Hattery*, *** the appellate court held that the presiding judge of the criminal division of the circuit court had similar authority. Accordingly, we hold that Rule 21(c) authorized the presiding judge of the chancery division to enter general orders in the exercise of her general administrative authority." *Dzis*, 2011 IL App (1st) 102812 ¶ 20.

¶ 13 We also found "no conflict between [GAO 2007-03] and section 2-202 of the Code" (735 ILCS 5/2-202 (West 2008)), because "[n]o provision in section 2-202 restricts the circuit court from finding the sheriff disqualified from service of process for a certain class of cases, like the mortgage foreclosure cases governed by [GAO 2007-03]." *Dzis*, 2011 IL App (1st) 102812 ¶ 23. Finally, we rejected the defendant's contention that the court lacked authority to enter GAO 2007-03 because it determines substantive rights. Rather, we found that service of process is a matter of practice or procedure and not a matter of substantive law, and "courts have the power to adopt procedural rules governing service of process, and the court's rules prevail over conflicting statutes." *Dzis*, 2011 IL App (1st) 102812 ¶¶ 25-27.

¶ 14 We find no reason to depart from our finding in *Dzis* that GAO 2007-03 was a valid exercise of Judge Kinnaird's authority and affirm the validity of that holding. As in *Dzis*, here

1-11-1192

there is no dispute that defendant was served with a summons and complaint by special process server Terry Ryan pursuant to the procedures outlined in GAO 2007-03. See *Dzis*, 2011 IL App (1st) 102812 ¶ 14. Accordingly, we affirm the trial court's denial of defendant's successive motion to quash.

¶ 15 Affirmed.